

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6974

BILL NUMBER: SB 245

NOTE PREPARED: Jan 17, 2006

BILL AMENDED: Jan 11, 2006

SUBJECT: Telecommunications.

FIRST AUTHOR: Sen. Hershman

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill specifies that a person that transmits communications through Internet Protocol-enabled services is not a public utility. The bill also specifies that requirements concerning the use of a communications service provider's facilities or equipment do not apply to: (1) rural electric membership corporations (REMCs); or (2) rural telephone cooperatives; that have withdrawn from the jurisdiction of the Utility Regulatory Commission (IURC). The bill specifies that pole attachment and interconnection requirements do not apply to a communications service provider that is an REMC.

This bill prohibits the IURC from exercising jurisdiction over: (1) advanced and broadband services; and (2) information services. The bill prohibits, after March 27, 2006, the IURC from exercising jurisdiction over nonbasic telecommunications service.

It specifies that "basic telecommunications service" does not include functionally equivalent service provided by a person that transmits communications through Internet Protocol-enabled services. The bill also provides that during the period beginning March 28, 2006, and ending June 30, 2009, a provider may increase the flat monthly rate for basic telecommunications service: (1) not more than once; and (2) by not more than \$1; every 12 months. The bill provides that not later than 18 months after a provider's first rate increase in a local exchange area, the provider must offer broadband service to at least 50% of households in the local exchange area. The bill requires an incumbent local exchange carrier (ILEC) to continue to offer a flat monthly rate for unlimited local calling in exchange areas in which the provider offers basic telecommunications service on March 27, 2006.

The bill prohibits, after June 30, 2009, the IURC from exercising jurisdiction over basic telecommunications

service. It makes conforming changes to the laws concerning rural telephone cooperatives. This bill prohibits the IURC from exceeding the authority delegated to it under federal law with respect to: (1) interconnection; (2) the resale of telecommunications service; and (3) unbundled network elements. It requires the IURC to biennially identify and eliminate obsolete telecommunications regulations.

The bill preserves the IURC's duties with respect to: (1) dual-party relay services; (2) the 211 dialing code; (3) slamming and cramming laws; (4) universal service; (5) certificates of territorial authority; (6) mediating or arbitrating disputes between providers; and (7) interconnection agreements.

The bill allows the IURC to require communications service providers to report, not more often than quarterly, information on: (1) service quality and performance; (2) the provider's dark fiber in Indiana; and (3) the types of communications service offered by the provider and the areas in Indiana in which those services are offered. The bill allows the IURC to revoke a certificate of territorial authority issued to a communications service provider if the provider fails or refuses to comply with the reporting requirements. The bill also provides that on July 1, 2009, certain consumer protection duties of the IURC and the Office of Utility Consumer Counselor are transferred to the Consumer Protection Division of the Attorney General's Office (Division). This bill provides that after June 30, 2009, communications service providers are not subject to the Public Utility Fee.

The bill establishes the Communications Service Provider Account within the state General Fund to pay the expenses of the IURC and the division in fulfilling their duties with respect to communications service providers. This bill requires the General Assembly to annually appropriate to the IURC and the Division the amounts needed to fulfill such duties.

The bill allows a provider of last resort to meet its obligations using any available technology. This bill after June 30, 2009, requires a communications service provider to obtain a certificate of territorial authority from the IURC before offering communications service in Indiana. The bill also requires the IURC to issue a certificate not later than 30 days after receiving a complete and accurate application from a provider. This bill provides that the IURC may not require a provider to file a tariff as a condition of receiving a certificate. The bill allows the IURC to condition the issuance of a certificate on a provider's agreement to provide advance notice to customers of changes in rates or services. This bill also provides that a certificate of public convenience and necessity issued to an REMC may serve as a certificate of territorial authority for communications service provided by the REMC, subject to the IURC's right to require the REMC to provide certain information about the communications services provided.

The bill also prohibits a communications service provider from entering into an agreement requiring any person to restrict or limit the ability of another provider to obtain: (1) easements or rights-of-way; or (2) access to real property.

The bill provides that the IURC may not require a provider to provide communications service to occupants of multitenant real estate if the owner, operator, or developer of the property does any of the following to benefit another provider: (1) Permits only one provider to install communications facilities or equipment on the premises. (2) Accepts incentives from a provider in exchange for allowing the provider the exclusive right to provide service to the premises. (3) Collects charges from occupants for communications service. (4) Enters into a prohibited agreement with a provider. The bill provides that after June 30, 2006, the IURC is the sole franchising authority for the provision of video service in Indiana.

The bill also provides that the holder of a state-issued franchise must comply with state and local laws

governing the use of rights-of-way. It provides that such laws may not: (1) discriminate against a provider based on the technology used to deliver service; or (2) allow a video service system owned or operated by a local unit to use rights-of-way on more favorable terms.

The bill prohibits the IURC from requiring a provider to satisfy any build-out requirements. It allows the holder of a local franchise on June 30, 2006, to: (1) continue providing service under the local franchise until the local franchise expires; or (2) terminate the local franchise and apply to the IURC for a state-issued franchise.

The bill provides that a provider that terminates a local franchise remains subject to any obligations owed to a private person under the franchise until the time the terminated franchise would ordinarily expire. The bill also requires the holder of a state issued franchise to pay a quarterly franchise fee to each local unit included in the holder's service area. This bill provides that the fee to be paid to a unit equals 5% of the provider's gross revenue from providing video service in the unit.

The bill prescribes requirements concerning public, educational, and governmental channel capacity and financial support. This bill prohibits a provider from denying access to video service to any group of potential subscribers based on income. It prohibits a political subdivision that does not provide communications service on June 30, 2006, from providing communications service, other than broadband service, after June 30, 2006.

The bill prohibits a political subdivision from controlling, owning, or operating facilities for providing broadband service unless the political subdivision: (1) conducts an inquiry into the availability of broadband service from other providers in the area; (2) holds a public hearing; and (3) determines the costs and benefits of the proposed facilities. The bill provides that before a political subdivision may provide broadband service in a designated area in its jurisdiction, the political subdivision must determine that there are not at least two persons that provide or intend to provide broadband service in the designated area. This bill prohibits a political subdivision that provides communications service from requiring a nonsubscriber to pay any of the costs of providing the service. It repeals superseded statutes.

Effective Date: Upon passage; January 1, 2006 (retroactive); July 1, 2006; July 1, 2009.

Explanation of State Expenditures: *IURC:* This bill contains provisions that will add responsibilities to the IURC and others that will remove responsibilities from the IURC. Because the Commission's responsibilities encompass all utility types, it is unknown what proportion of the Commission's spending is related to telecommunications.

The bill also requires the IURC to report to the Regulatory Flexibility Committee on its analysis of various issues concerning the telecommunications industry, including the status of competition in the industry and the availability of various telecommunication services in Indiana. The bill requires the IURC to report to the Committee by November 15, 2007, and may be made in conjunction with its annual report to the Committee. Beginning with the annual report that is due July 1, 2008, the IURC will be required to report to the Committee every even-numbered year thereafter.

Consumer Protection Division: This bill shifts the consumer protection responsibilities, related to telecommunications, of the IURC and the Office of the Utility Consumer Counselor (OUCC) to the Consumer Protection Division of the Attorney General's office after July 1, 2009. Because one of the main responsibilities of the IURC is to hold hearings for consumer complaints and utility petitions for all utilities, it is unknown what proportion of the IURC's spending is telecommunications-related. The purpose of the OUCC is to represent

the consumer in the Commission's hearing, and it is also unknown what proportion of the OUCC's spending is telecommunications-related.

While reducing the administrative burden on the Commission and the OUCC, the Division will experience an increase in expenditures related to administering the new responsibilities. These expenses will not occur until FY 2010.

Explanation of State Revenues: (Revised) *Public Utility Fees:* This bill provides that any provider of any of the following services:

- (1) telecommunication;
- (2) information;
- (3) video;
- (4) broadband;
- (5) advanced services; or
- (6) Internet Protocol-enabled services;

is exempt from paying the Public Utility Fee after June 30, 2009. This will decrease revenue to the Public Utility Fund. The exact amount of the decrease is indeterminable. The bill also shifts the cost of regulating communication service providers to the state after June 30, 2009. Under current law, the cost of regulating all utilities is paid from the Public Utility Fee. The amount that the IURC, OUCC, and Consumer Protection Division will spend to regulate communication service providers after the changes in this bill is indeterminable. This shift in costs could also impact the amount of the Public Utility Fee that is charged to the non-communications utilities.

The bill creates the Communication Service Provider Account (CSPA) in the state General Fund. Under current law, the IURC and OUCC operating budgets are paid from the Public Utility Fund. This bill provides that only the portions of the operating budgets for the IURC and OUCC for regulating non-communication utilities are to be paid from the Public Utility Fund. The bill then provides that after June 30, 2009, the General Assembly appropriate from the state General Fund to the CSPA the amount required to fund the portions of the operating budgets for the IURC, OUCC, and Consumer Protection Division of the Attorney General's Office that are related to regulation of communication service providers.

The Public Utility fees are deposited in the Public Utility Fund. The operating budgets of the IURC and the OUCC are funded by regulated utilities operating in Indiana. The IURC determines the rate at which to bill the utilities based on the two agencies' budgets, less reversions, divided by the total amount of gross intra-state operating revenue received by the regulated utilities for the previous fiscal year. Based on this formula, utilities are currently billed approximately 0.10% of their gross intra-state operating revenues to fund the IURC and OUCC. In FY 2005, fees from the utilities and fines generated approximately \$11.7 M.

Rates & Charges: Although the Commission will retain its jurisdiction over the provision of dual-party relay services, 211 services, slamming and cramming laws, interconnection agreements, and rates charged to pay phone service providers, telecommunications carriers providing basic telecommunications will no longer be subject to the Commission's approval for setting rates and charges for service. Such services are subject to the state Sales Tax. Revenues generated by telecommunications carriers' services may increase or decrease subject to fluctuation in the carriers' rates and charges. State Sales Tax revenue is deposited in the following funds: General Fund, Property Tax Replacement Fund, Public Mass Transportation Fund, Industrial Rail Service Fund, and the Commuter Rail Service Fund.

The IURC is to retain jurisdiction over the rates that may be charged by an incumbent local exchange carrier to a pay phone service provider.

Access to Property: The bill allows the IURC to impose a civil penalty of not more than \$500 per violation if a telecommunications provider enters a contract, agreement, or other arrangement that requires a person to restrict or limit the ability of a provider to obtain easements or rights-of-way on property used to provide communications services. Civil penalties are to be deposited in the Communications Service Provider Account.

Territorial Authority: One of the main telecommunications-related responsibilities of the Commission after June 30, 2009, will be to continue issuing territorial authority certificates to telecommunications carriers wishing to provide telecommunications services to customers in Indiana. Currently, a hearing must be held before the certificate may be issued. This provision eliminates this requirement and should further reduce the Commission's administrative burden.

Rate Increase: The bill allows certain telecommunications providers to increase their flat monthly rates by a predetermined amount. If utility rates are increased as a result of the bill, state General Fund revenue from the state's 1.4% Utility Receipts Tax could also increase.

Local Broadband Internet Service: A person may file an action against a political subdivision if affected by the political subdivision allegedly violating the provisions of this bill. If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil filing fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

Explanation of Local Expenditures: *Local Broadband Internet Service:* This provision would require a political subdivision to conduct an inquiry into the availability of telecommunication services, hold a hearing, and determine the costs and benefits before deciding to take an interest in providing broadband internet service. Once it has been decided to take an interest in the service, a political subdivision may issue bonds to finance the capital costs of needed facilities. The bonds are to be paid only from revenues generated by the political subdivision from providing the service.

The fiscal impact of this provision is dependent on local action and can vary based on the manner in which a political subdivision chooses to carry out the provisions. This bill will only affect those political subdivisions wishing to take interest in providing broadband internet service after June 30, 2006.

Public Utility Fund: Municipal utilities are not subject to the state's Public Utility Fee.

Explanation of Local Revenues: *Video Service Franchises:* For video service providers who have local franchises, the provider may choose to continue providing the video service until the local franchise expires or terminate the local franchise to apply for a certificate from the IURC. If a provider chooses to terminate its local franchise, the provider will be required to pay any accrued but unpaid franchise fees still due under the local franchise and will remain subject to the rights, duties, and obligations of the local franchise.

Those providers that receive a certificate from the IURC will be assessed a fee of five percent of the provider's gross revenue received from providing service in a unit to be paid to that unit. Those providers who continue providing video service under their current local franchise will not be required to pay the five percent of gross revenue fee, but rather the fee set in the local franchise agreement. The fiscal impact of these provisions could

vary among local units depending on the provisions contained in their current franchise agreements.

Background Information: Some municipalities, in their municipal code, allow for a franchise fee provision to be included in cable franchise agreements. One municipality in Indiana charges a franchise fee of 5% of the operator's gross revenue, less taxes and other fees charged by the unit. Other units allow for the fee to be set in the agreement, but not all units address the agreements in detail.

Local Broadband Internet Service: If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 filing fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund.

State Agencies Affected: Indiana Utility Regulatory Commission; Attorney General; Department of Local Government Finance.

Local Agencies Affected: Certain political subdivisions, trial courts, city and town courts.

Information Sources: Indiana Utility Regulatory Commission.

Fiscal Analyst: Adam Brown, 317-232-9854.